

REMARKS

In the Office Action¹, the Examiner:

rejected claims 1-2, 35, 41, and 47 under 35 U.S.C. § 112, second paragraph, as allegedly indefinite and

rejected claims 1-4, 6, 7, 35-41, and 47 under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent Publication No. 2002/0029161 to Brodersen et al. ("Brodersen") in view of U.S. Patent Publication 2003/0033187 to Jones et al. ("Jones").

Claims 1-4, 6, 7, 35-41, and 47 remain pending and under examination. Claims 8-34 and 42-46 are withdrawn. Claims 1, 35, 41, and 47 are currently amended. No new matter is added by this amendment.

Applicant respectfully traverses the rejection of claims 1, 2, 35, 41, and 47 under 35 U.S.C. § 112, second paragraph as allegedly indefinite. The Examiner states "neither the claims nor the specification discloses what a 'priority category/categories' is/are and how 'priority categories' determine a priority value." Office Action p. 3. Claims 1, 41, and 47 have been amended and thus the rejection of these claims is moot.

With respect to claim 35, Applicant submits that claim 35 is definite. Claim 35 recites "determining a priority value for each of the projects by providing priority categories that identify an importance of the projects and receiving a selection of one of the priority categories from a user." Applicant submits that it is clear from claim 35 that

¹The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

a “priority category” is used to “identify an importance.” Further, Applicant submits that it is not the “priority categories” that “determine a priority value,” as the Examiner alleges. Rather, as recited in claim 35, the priority value is determined by “providing categories” and “receiving a selection of one of the priority categories.” As such, claim 35 is definite. Applicant respectfully requests that the rejection be withdrawn.

Applicant respectfully traverses the rejection of claims 1-4, 6, 7, 35-41, and 47 under 35 U.S.C. § 103(a) as obvious over Brodersen in view of Jones. A *prima facie* case of obviousness has not been established with respect to these claims.

“The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. . . . [R]ejections on obviousness cannot be sustained with mere conclusory statements.” M.P.E.P. § 2142, 8th Ed., Rev. 7 (July 2008) (internal citation and inner quotation omitted). “[T]he framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). . . . The factual inquiries . . . [include determining the scope and content of the prior art and] . . . [a]scertaining the differences between the claimed invention and the prior art.” M.P.E.P. § 2141(II). In rejecting a claim, “Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.” M.P.E.P. § 2141(III).

On page 6 of the Office Action, the Examiner alleges “[a]dditionally, it would also have been obvious to one of ordinary skill in the art at the time of the invention to include in the assigning of resources to tasks method of Keller determining a priority value for each of the projects” It is not clear from the Office Action which of claims

1-4, 6-7, 35-41, and 47 the Examiner is alleging to be obvious. Furthermore, the Examiner relies on a reference referred to as “Keller” on page 6 which has not been identified. Neither the Office Action nor the PTO-892 form identify a “Keller” reference and there is no such reference of record. Accordingly, a *prima facie* case of obviousness has not been established at least because the Office Action does not identify the “Keller” reference, or to which claim “Keller” is applied. Applicant asserts that the next Office Action, if not an allowance, should be a non-final Office Action to provide Applicant with a full and fair opportunity to respond to the rejection.

Alternatively, the next Office Action, if not an allowance, should be a non-final Office Action because a *prima facie* case of obviousness has not been established for the rejected claim at least because the Office Action implicitly admits that Brodersen and Jones do not disclose the “assigning of resources to tasks method of Keller.” See Office Action p. 6.

Claim 1 recites, in part, “determining a priority value for each of the projects by identifying an importance of the qualifying attributes and receiving an identification of the importance of one of the qualifying attributes from a user.” The Office Action correctly recognizes that Brodersen does not disclose or suggest this element of claim 1. The Office Action incorrectly alleges, however, that Jones remedies this deficiency of Brodersen. Office Action p. 5. In particular, the Office Action alleges that Jones discloses “determining a priority value for each of the projects by providing priority categories that identify an importance of the projects and receiving a selection of one of the priority categories from a user (¶¶0005, 0010, 0037, Table 1, 0075, 0085, 0087, 0089, and claims 2 and 14).” Office Action p. 5. That allegation is not correct. Jones

does not disclose or suggest the claimed “determining a priority value for each of the projects by identifying an importance of the qualifying attributes and receiving an identification of the importance of a qualifying attribute from a user.”

Jones discloses “[w]hen any project contributor, for example, a contractor labels a job as a priority over another using STARTNET™ . . . STARTPLAN™ places the contractor in **chronological order** for use of that space, according to this declared priority” (emphasis added). Jones, paragraph [0037]. Jones further discloses that “[a]s each trade signs up they are added to the end of the Contractor Priority Table and it is for the planner to move them up to the correct position in relation to project **sequence**” (emphasis added). *Id.* This disclosure does not disclose or suggest “identifying an importance of the qualifying attributes” as claimed in claim 1.

For example, Jones does not disclose or suggest an “importance” for the disclosed “priority.” In contrast, Jones discloses a “chronological order” or a “sequence” in which a construction project is to be carried out. See e.g., Jones, paragraph [0003]. Jones is only interested in the “sequence” of events during a construction project. For example, Jones is directed to ensuring pipe fitters install pipes in the walls of a construction project prior to the sheetrock installation. Jones does not disclose or suggest that the pipes have a higher “importance” than the sheetrock does, only that there is a “sequence” or a necessary “chronological order” for their respective installations. Accordingly, because Jones does not disclose or suggest the claimed “identifying the importance of a qualifying attribute,” Jones does not remedy the deficiency of Brodersen. Inasmuch as the combination of Brodersen and Jones do not disclose or suggest the elements of the claims, the Office Action has not properly

ascertained the differences between the cited references and the claims. Accordingly, the Office Action has not clearly articulated a reason why the claim would have been obvious to one of ordinary skill in the art at the time of the invention. A *prima facie* case of obviousness has not been established with respect to claim 1. The rejection should be withdrawn.

Claims 2-4, 6, and 7 depend from independent claim 1. Since the combination of Brodersen and Jones does not disclose each and every element of claim 1, Applicant asserts that claims 2-4, 6, and 7 are allowable at least due to their dependence on independent claim 1.

Claim 35 recites "presenting a proposed allocation of human resources to the project manager for a project based on the identified available human resources and the priority value of the project." The Office Action correctly recognizes that Brodersen does not disclose or suggest this element of claim 35. The Office Action incorrectly alleges, however, that Jones remedies this deficiency of Brodersen. Office Action p. 6.

The Office Action alleges that Jones discloses "presenting a proposed allocation of human resources to the project manager for a project based on the identified available human resources and the priority value of the project (¶¶0005, 0010, 0037, Table 1, 0075, 0085, 0087, 0089, and claims 2 and 14)." Office Action p. 6. That allegation is not correct.

Jones discloses that a "(Contractor Priority Table) . . . shows contractors once they have inputted their participation details. When any project contributor, for example, a contractor labels a job as a priority over another using STARTNET™ . . . STARTPLAN™ places the contractor in chronological order for use of that space,

according to this declared priority. The priority table will be over-written by a directing person, normally the planner using STARTPLAN™, if it does not adequately reflect the site priorities. As each trade signs up they are added to the end of the Contractor Priority Table and **it is for the planner to move them up to the correct position in relation to project sequence.**” Jones, paragraph [0037].

Thus, Jones clearly discloses a contractor is scheduled for a particular space in a construction project based on the order in which the contractor places himself on the list. The planner may then change the sequence if he sees fit. Contractors are assigned in chronological order based on their own declared priority, and the directing person has to “move them up to the correct position in relation to the project sequence.” However, Jones does not disclose or suggest a “proposed allocation,” because Jones merely discloses a list. Jones does not disclose or suggest anything that could even broadly be construed as a “proposed allocation,” Jones merely discloses a list that a “directing person” must organize into a “sequence.”

Even if it is assumed that this disclosure could constitute the claimed “proposed allocation,” an assumption which is not correct for at least the reasons above, there is no disclosure or suggestion in Jones that the alleged “proposed allocation” is “based on the identified available human resources.” That is, nothing in Jones that discloses or suggests that the “chronological order” or the “sequence” list disclosed has anything to do with the “availab[ility]” of the contractors.

Accordingly, Jones does not disclose or suggest at least the claimed “proposed allocation” and the claimed “proposed allocation based on the identified available human resources” as the Office Action alleges. Inasmuch as Jones does not disclose

or suggest this element of claim 35, a *prima facie* case of obviousness has not been established. Accordingly, the Office Action has not clearly articulated a reason why the claim would have been obvious to one of ordinary skill in the art at the time of the invention. A *prima facie* case of obviousness has not been established with respect to claim 35. The rejection should be withdrawn.

Independent claims 41, and 47 although of different scope than claims 1 and 35, patentably distinguish the prior art for at least reasons similar to those discussed above with respect to claims 1 and 35 and are likewise allowable.

Applicant asserts dependent claims 36-40 are further allowable over the prior art at least due to their dependence from the independent claims discussed above. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection of these dependent claims.

CONCLUSION


In view of the foregoing, Applicant respectfully requests reconsideration and reexamination of this application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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